

standing around while the Appellant was repairing the forklift alone and unaided. They went there together and were repairing the machine together and if the Appellant was negligent, as the Respondents averred, then Lim was just as negligent, if not more so, in view of Lim's familiarity with electric forklifts.

Lim was not called by the Respondents to give evidence although he had been subpoenaed by them. Apart from the Appellant, Lim was the only other person who could have assisted the court to determine what actually happened. We are satisfied that the Respondents did not call Lim to give evidence because they knew that his testimony would not help their case. If Lim was negligent the Respondents would be vicariously liable for his negligence because Lim was the Respondents' servant and his negligence in the course of his employment caused injuries to his fellow workman. The learned trial judge plainly failed to apply his mind to these matters. He did not consider the part played by Lim in the repair job at all.

In *Williams v. Port of Liverpool Stevedoring Co Ltd & Anor.*⁽¹⁾, the plaintiff who was a member of a gang of six workmen employed by a firm of master stevedores, sustained injuries when a number of bags of sodium carbonate, which formed the cargo of a barge being unloaded by the gang, fell upon him. The collapse of the bags was due to their instability arising from the method of unstowing adopted by the gang contrary to the express and repeated instructions of the hatch foreman in charge and others. The Plaintiff, who was of equal status with his fellow workmen in the gang, was himself expressly instructed to deal with the cause of the instability of the bags and warned of the danger they presented; but he ignored the instructions and he and the other members of the gang continued, in the absence of the hatch foreman, to unstow the cargo by their own method instead of in the manner in which they were instructed. It was held in this case that there was a duty owed to the plaintiff by each member of the gang to take reasonable care in the actual work of unstowing and in the method of work employed, and accordingly, even though the plaintiff tacitly consented to the method of unstowing contrary to instructions, the employers were liable vicariously for the negligence of his fellow workmen.

In the present case we find the Respondents vicariously liable for the negligence of Lim, another employee of theirs participating

A in this repair job. We also find that the Appellant was contributorily negligent and his share of the responsibility for the accident was one-half. Accordingly the appeal is allowed with costs here and in the court below. As the sum of \$85,000/- was agreed for special and general damages on a 100% basis, the damages recoverable by the Appellant would be \$42,500/-.

Appeal allowed.

Solicitors: *Murphy & Dunbar; Tan, Rajah & Cheah.*

RE K.E. HILBORNE

D [O.C.J. (Wee Chong Jin C.J., Kulasekaram and Thean JJ.)
February 21, 1984]
[Singapore — Originating Summons No. 741 of 1983]

Legal Profession — Advocate & Solicitor — Solicitor asked to show cause why he should not be dealt with consequent on a report of the Disciplinary Committee — Failure to appear to show cause — Legal Profession Act (Cap. 217), s. 84.

In this case the Disciplinary Committee appointed under the provisions of the Legal Profession Act, found that the respondent marched unannounced and without prior appointment to the inner private chambers of the late Mr. Justice D'Cotta in the absence of the solicitors for the other side and was discourteous, rude and insolent to the late Judge. The Disciplinary Committee also found that the respondent uttered a threat to report the late Judge to "high authority" and that he addressed the late Judge in an angry tone of voice. The respondent was asked to show cause why he should not be dealt with under the provisions of section 84 of the Legal Profession Act (Cap. 217) but he failed to appear to show cause under the show cause order.

Held: having regard to the findings of the Disciplinary Committee and the respondent not having appeared in response to the show cause order, the court found the respondent's conduct to be such as to come within the provisions of section 84(2)(h) of the Legal Profession Act. The conduct of the respondent deserved the maximum punishment provided under section 84 and it was ordered that he be struck off the Roll of the court.

ORIGINATING SUMMONS.

I *Sachi Saurajen* for the Law Society.
Respondent not appearing.

Wee Chong Jin C.J. (delivering oral Judgment of the Court): The Respondent, having been asked to show cause why he should not be dealt with under the provisions of section 84 of the Legal

Profession Act consequent on a report of the Disciplinary Committee appointed under the provisions of the Act, has failed to appear before us to show cause under the Show Cause Order. He has, so we are told, filed an affidavit in these proceedings which we declined to admit as evidence or as part of the record of these proceedings. The findings of the Disciplinary Committee were that on February 13, 1981, the Respondent with his junior, acting for a party in a contentious action which was tried by the late Mr. Justice D'Cotta, marched unannounced and without prior appointment into the late Judge's inner private chambers in the absence of the solicitors or counsel for the other party to the proceedings and was discourteous, rude and insolent to the late Judge. What made his conduct more reprehensible was that, as found by the Disciplinary Committee, the Respondent uttered a threat to report the late Judge to "high authority" and that he addressed the late Judge in an angry tone of voice. As the Disciplinary Committee said in its report, the late Judge's conduct to members of the Legal Profession has always been impeccable.

Having regard to these findings and the Respondent not having appeared in response to the Show Cause Order, we find the Respondent's conduct to be such as to come within the provisions of section 84(2)(b) of the Act. With regard to the question of the punishment, this conduct of the Respondent deserves the maximum punishment provided under section 84 and, accordingly, we order that he be struck off the Roll of this court and that he should pay the costs of today's proceedings and the costs of the Law Society before the Disciplinary Committee.

Order accordingly.

Solicitors: *Drew & Napier*

**A SUNTOSO JACOB v. KONG MIAO MING
 & ANOR.**

[O.C.J. (Lai Kew Chai J.) May 14, 1984]
[Singapore — Civil Suit No. 3196 of 1981]

B *Company Law — Shares — First defendant holding 92,000 shares upon trust for plaintiff — Purpose of transfer of shares to first defendant was to deceive public administration of Singapore — Refusal of first defendant to re-transfer said shares — Court will not lend its aid to man who founds his cause of action upon illegal act.*

C The plaintiff, an Indonesian national, sought a declaration that the first defendant was holding 92,000 shares of \$1/- nominal value each in the second defendant company, Aspa Shipyard Pte. Ltd. upon trust for him and for an order that these shares be retransferred to him. The Company had a paid-up capital of 200,000 shares. If the plaintiff succeeded he would altogether own 190,000 shares in the Company and would be its controller.

D The plaintiff claimed that in early 1980 the said shares were transferred by the plaintiff to the first defendant as his nominee, the first defendant having paid nothing for them and having executed a blank transfer form.

E In February 1980, the plaintiff bought a tug from Japan. Subsequently, he instructed the first defendant to register the said tug under the Singapore flag in the name of the second defendant company.

F At the material time, the Registrar of Singapore Ships had issued an administrative guideline in which it was clearly announced that as an administrative policy, vessels such as the tug boat, would not be accepted for registration under the Merchant Shipping Act (Cap. 172) unless the corporate owner was itself owned as to at least one-half of its equity by Singapore citizens. The plaintiff was aware of this requirement. The Asst. Registrar of Singapore Ships confirmed in evidence that if he had known that the first defendant had held the said shares upon trust for a foreign national, he would not have registered the tug as a Singapore vessel. The plaintiff himself admitted that the true ownership of the said shares had to be kept away from the Registrar of Singapore Ships in order to obtain registration.

H Held, dismissing the plaintiff's claim: (1) on the evidence, the plaintiff had transferred the said shares to the first defendant in order that the Registrar of Singapore Ships would get a false picture. Although the first defendant had alone signed the registration papers containing the false representation, it was all done with the knowledge and consent of the plaintiff;

I (2) "Let the said shares lie where they fall".

Cases referred to:

- (1) *Holman v. Johnson* (1775), 1 Cowper 341; [1775-1802] All E.R. Rep. 98.
- (2) *Palaniappa Chettiar v. Arunasalam Chettiar* [1962] M.L.J. 143.